



BILLING CODE 6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2022-0397; FRL-10011-01-R4]**

### **Air Plan Approval; South Carolina: New Source Review Updates**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA or the Agency) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (hereinafter referred to as SC DHEC or South Carolina) via a letter dated February 3, 2022. The SIP revisions include updates to South Carolina's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) regulations. Specifically, the updates incorporate recent changes to the federal New Source Review (NSR) regulations, consisting of a clarification to the Project Emissions Accounting provisions, updates promulgated in the recent NSR Corrections Rule, and updates to reflect the regulation of greenhouse gases (GHGs) pursuant to the Tailoring Rule. EPA is proposing to approve these revisions pursuant to the Clean Air Act (CAA or Act) and implementing federal regulations.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2022-0397 at [www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://Regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www2.epa.gov/dockets/commenting-epa-dockets](http://www2.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:** Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at [febres-martinez.andres@epa.gov](mailto:febres-martinez.andres@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The PSD program is a preconstruction permitting program that requires “major” stationary sources of air pollution to obtain a PSD permit prior to beginning construction

in areas classified as either in attainment with the National Ambient Air Quality Standards (NAAQS) or unclassifiable. *See* CAA section 165. EPA requires PSD SIPs to meet or exceed the minimum requirements codified at 40 CFR 51.166.<sup>1</sup>

The NNSR permitting program is a preconstruction permitting program that requires “major” stationary sources of air pollution to obtain an NNSR permit prior to beginning construction in areas classified as being in nonattainment with the NAAQS. *See* CAA section 173. EPA requires NNSR SIPs to meet the minimum requirements codified at 40 CFR 51.165.

Over the years, EPA has updated its rules implementing NNSR and PSD permitting at 40 CFR 51.165 and 40 CFR 51.166, respectively, and as a result of these amendments, states and localities similarly are required to update their SIP-approved rules to ensure consistency with the minimum requirements in federal PSD and NNSR rules. Collectively, EPA commonly refers to its PSD and NNSR permitting programs as major “new source review” permitting programs.

On February 3, 2022, SC DHEC submitted SIP revisions to EPA for approval that include changes to South Carolina’s major NSR permitting regulations to make them more closely align with federal requirements for PSD and NNSR permitting based on recent updates to the federal NSR regulations.<sup>2</sup> Specifically, these changes update South

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<sup>1</sup> Related rules setting forth the federal PSD program for areas without an approved PSD permitting program are codified at 40 CFR 52.21.

<sup>2</sup> EPA notes that the February 3, 2022, submittal was received by EPA on February 4, 2022. For clarity, EPA will refer to this submittal based on the date of the letter.

Carolina’s Regulation 61-62.5, Standard No. 7 – *Prevention of Significant Deterioration* and Standard No. 7.1 – *Nonattainment New Source Review*.<sup>3</sup>

EPA last approved updates to South Carolina’s SIP-approved major NSR regulations on October 28, 2021 by acting on an April 24, 2020 submittal from South Carolina. *See* 86 FR 59646. Since the time of South Carolina’s previous April 24, 2020 submittal to revise its major NSR rules, EPA has updated the federal major NSR regulations to clarify the Project Emissions Accounting provisions and to correct certain errors in the NSR regulations that have accumulated over time.<sup>4</sup> South Carolina’s February 3, 2022, SIP submittal seeks to incorporate these updates to the federal rules into the EPA-approved major NSR regulations in the South Carolina SIP. Additionally, as discussed in detail below, South Carolina’s SIP submittal seeks to incorporate into the South Carolina SIP updated PSD provisions related to the regulation of GHGs pursuant to the Tailoring Rule,<sup>5</sup> which was previously implemented in South Carolina through legislative action pursuant to South Carolina Joint Resolution H4888 (2010). EPA is proposing to approve these changes as meeting the requirements of the federal PSD and NNSR programs and as being consistent with the CAA. Additional details on South

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<sup>3</sup> EPA notes that under the February 3, 2022, cover letter, SC DHEC also submitted updates to the following State Regulations: 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*; Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*; and Regulation 61-62.70, *Title V Operating Permit Program*. However, South Carolina explains in the February 3, 2022, cover letter that these regulations are not part of the SIP, and they are not being requested for approval by EPA into the South Carolina SIP at this time.

<sup>4</sup> The “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting” Rule was finalized on November 24, 2020. *See* 85 FR 74890 (hereinafter “Project Emissions Accounting Rule”). The “New Source Review Regulations; Correction” Rule was finalized on July 19, 2021. *See* 86 FR 37918 (hereinafter “NSR Corrections Rule”).

<sup>5</sup> “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (hereinafter referred to as the “GHG Tailoring Rule”). *See* 75 FR 31514 (June 3, 2010).

Carolina’s February 3, 2022, revisions and EPA’s analysis of the changes can be found below.

## **II. Analysis of the State’s Submittal**

As previously mentioned, the February 3, 2022, SIP submittal includes changes to South Carolina’s PSD and NNSR regulations. Many of these changes are minor and are being proposed to align South Carolina’s SIP-approved NSR rules with changes made by EPA in the federal PSD and NNSR regulations. More details on key updates included in the State’s proposed changes to the South Carolina SIP are found in sections II.A and II.B below.

### *A. Regulation 61–62.5, Standard No. 7— Prevention of Significant Deterioration*

The February 3, 2022, SIP submittal includes the following key changes to South Carolina’s PSD regulations contained within Regulation 61-62.5, Standard No. 7 (hereinafter referred to as “Standard No. 7”) in order to more closely align them with the federal PSD regulations: 1) Added a definition for the “sum of the difference” along with updated wording throughout Standard No. 7 to include this new definition, based on EPA’s Project Emissions Accounting Rule; 2) added a definition for “subject to regulation”; and 3) made several changes throughout the rule based on EPA’s recent NSR Corrections Rule. More details on these changes to Standard No. 7 are included below. All other changes to Standard No. 7 are minor edits, such as adding brackets where needed, correcting grammatical errors, and renumbering sections based on added or deleted paragraphs throughout the rule.

#### *i. Revisions to reflect the Project Emissions Accounting Rule*

Under paragraph (A)(2)(d)(vii), South Carolina adds a new definition for the “sum of the difference,” which is used for other definitions under paragraphs (A)(2)(d)(iii), (iv), and (vi). Subsequently, the definition for “*hydrid test for projects that involve multiple types of emissions units*,” under paragraph (A)(2)(d)(vi), was updated to include a reference to the new definition of the sum of the difference. These changes match those made to the federal PSD regulations at 40 CFR 51.166(a)(7)(iv)(f) and (g), through EPA’s November 24, 2020, Project Emissions Accounting Rule.

ii. Added definition of “Subject to regulation”

GHG emissions were covered for the first time by the PSD and title V operating permit programs effective on January 2, 2011 pursuant to the GHG Tailoring Rule. *See* 75 FR 31514 (June 3, 2010). In the June 3, 2010, notice, EPA described the implementation of the GHG Tailoring Rule, which consisted of the implementation of two steps (known as Step 1 and Step 2 of the GHG Tailoring Rule) and a commitment to establish a third step no later than July 1, 2012. Among the changes established in rulemaking for Step 1 and Step 2 of the GHG Tailoring rule, EPA added the definition for “Subject to regulation” to the federal PSD regulations at 40 CFR 51.166(b)(48).

In the implementation of Step 3, EPA decided against further phase-in of the GHG Tailoring Rule. Thus, the thresholds for determining PSD applicability based on emissions of GHGs remained the same as established in Steps 1 and 2 of the Tailoring Rule. *See* 77 FR 41051 (July 12, 2012). However, as part of Step 3 of the GHG Tailoring Rule, EPA revised the regulations under 40 CFR 52.21 to establish Plantwide Applicability Limits (PALs) for GHG emissions. *Id.* Prior to that, PALs were only available for GHGs on a mass basis. EPA’s July 12, 2012, rule revised the PAL

regulations in 40 CFR 52.21 to allow for GHG PALs to be established on a carbon dioxide equivalent (CO<sub>2</sub>e)<sup>6</sup> basis, as well as a mass basis.

On June 23, 2014, the U.S. Supreme Court addressed GHG Tailoring Rule permitting requirements in *Utility Air Regulatory Group (UARG) v. EPA*, 573 U.S. 302 (2014). The Supreme Court upheld EPA’s regulation of GHGs under the PSD program as applied to Step 1 sources (i.e., sources that are “major” for purposes of PSD permitting based on non-GHG pollutants) but further held that EPA may not treat GHGs as air pollutants for the purpose of determining whether a source is a major source (or is undergoing a major modification). Thus, the Court invalidated the PSD and title V permitting requirements for GHG Step 2 sources. As a result of the Supreme Court decision, on April 10, 2015, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated the regulations that implemented Step 2 of the GHG Tailoring Rule, including 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v). *Coalition for Responsible Regulation, Inc. v. EPA*, 606 Fed. Appx. 6, 7 (D.C. Cir. 2015).

Subsequently, EPA promulgated a good cause final rule on August 19, 2015, entitled “Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements” that removed from the federal regulations the portions of the PSD permitting provisions related to the GHG Step 2 sources that were vacated by the D.C. Circuit earlier that year. *See* 80 FR 50199.

In SC DHEC’s February 3, 2022, SIP submittal, South Carolina adds a new definition for “Subject to regulation” under paragraph (B)(52) of Standard No. 7, which

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<sup>6</sup> CO<sub>2</sub>e emissions refers to emissions of six recognized GHGs which are scaled to equivalent CO<sub>2</sub> emissions by relative global warming potential values and are then summed together to determine a total equivalent emissions value. *See* 40 CFR 51.166 (b)(48)(ii) and 40 CFR 52.21(b)(49)(ii).

mostly matches the current federal PSD definition for “[s]ubject to regulation” found at 40 CFR 51.166(b)(48). The new definition in paragraph (B)(52) correctly excludes the vacated language mentioned above but adds language related to the implementation of GHG PALs in South Carolina’s PSD program under subparagraph (B)(52)(a), which is not found under 51.166(b)(48). Although the language regarding GHG PALs is not found in the federal definition for “subject to regulation” under 40 CFR 51.166, the rulemaking for Step 3 of the GHG Tailoring Rule does add the GHG PAL language as part of the definition of “subject to regulations” under 40 CFR 52.21. *See* 77 FR 41051 at 41072. In that rulemaking, EPA notes that although the Agency is not adopting the GHG PAL language into the existing PSD PAL provisions under 40 CFR 51.166, “nothing in th[at] action is intended to restrict states from adopting th[ose], or similar, changes into their SIP-approved PAL program[s] if they choose to do so.” *See id.* at 41070.

EPA additionally notes that although South Carolina appears to be adding provisions of the GHG Tailoring Rule to its PSD program for the first time, the State has been implementing these provisions through a joint resolution that became effective on July 1, 2010.<sup>7</sup> Adding the definition for “subject to regulation” into South Carolina’s PSD rules merely streamlines the State’s rules to current federal PSD standards in 40

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<sup>7</sup> On June 11, 2010, the South Carolina Governor signed Joint Resolution H4888, which stated in relevant part that “[i]n the event that the United States Environmental Protection Agency adopts rules that raise the threshold levels of GHG emissions that will trigger a requirement for emitters of greenhouse gases in South Carolina, notwithstanding any other provision of law, the rules shall be immediately effective in this State on an interim basis and implemented by the South Carolina Department of Health and Environmental Control pursuant to this joint resolution.” *See* [https://www.scstatehouse.gov/sess118\\_2009-2010/bills/4888.htm](https://www.scstatehouse.gov/sess118_2009-2010/bills/4888.htm) (last accessed on June 10, 2022). Subsequently, on March 4, 2011, SC DHEC submitted a letter to EPA confirming that the State has the authority to implement the Tailoring Rule thresholds in their PSD and title V programs. This letter to EPA can be found in the docket for this proposed action.



CFR 51.166 and 52.21. However, this change has no practical effect because GHG provisions for PSD were already authorized on an interim basis by legislative action in South Carolina.

Finally, following the addition of this new definition, South Carolina renumbers the paragraphs that follow in order to accommodate the new entry. For the reasons described above, EPA believes that South Carolina's new definition is appropriate for incorporation into the SIP and is consistent with the federal PSD regulations.

iii. Revisions to reflect updates contained in the NSR Corrections Rule

Additionally, based on EPA's July 19, 2021, NSR Corrections Rule, South Carolina makes several edits and deletions to Standard No. 7 to match the federal PSD regulations, and these are detailed below.

First, in paragraph (B)(8), which defines Best Available Control Technology (BACT), as well as in paragraph (J)(1), which includes provisions related to the Control Technology Review Provisions of 40 CFR 51.166(j), SC DHEC adds a reference to 40 CFR Part 63 in accordance with updates contained in the NSR Corrections Rule.

Second, in paragraphs (B)(30)(c)(v)(1) and (B)(30)(c)(vi), SC DHEC removes references to 40 CFR 51.166 in accordance with the NSR Corrections Rule. These references are unnecessary because these paragraphs already referenced 40 CFR Part 51, Subpart I, which houses the federal PSD regulations contained within 40 CFR 51.166.

Third, under paragraphs (B)(32)(a)(i), (B)(32)(c)(viii), and (I)(1)(g)(viii), SC DHEC lowers the applicability threshold regarding consideration of fugitive emissions for municipal incinerators from the capacity to charge more than two-hundred and fifty (250) tons of refuse per day to the capacity to charge more than fifty (50) tons of refuse

per day. This change broadens the applicability of the State’s PSD rule for these types of sources and matches changes made to the federal PSD rule at 40 CFR 51.166(b)(1)(i)(a), (b)(1)(iii)(h), and (i)(1)(ii)(h) through the NSR Corrections Rule.

Fourth, SC DHEC deletes language within subparagraphs (I)(1)(a) through (e), (I)(1)(i), (I)(1)(j), (I)(6) through (11), (M)(1)(e), (M)(1)(g) and (M)(1)(h), from Standard No. 7 and inserts “[Reserved]” in their place. This deleted language matches the deletion of corresponding paragraphs in the federal PSD rules through the NSR Corrections Rule. Specifically, EPA removed paragraphs 40 CFR 52.21(i)(1)(i) through (v), (i)(1)(ix), (i)(1)(x), (i)(6) through (11), (m)(1)(v), (m)(1)(vii) and (m)(1)(viii).<sup>8</sup> In addition, South Carolina adds a new “[Reserved]” paragraph under (I)(12), which also matches the federal rules at 40 CFR 52.21(i)(12).<sup>9</sup>

Fifth, throughout several paragraphs in Standard No. 7, South Carolina updates internal references. Specifically, SC DHEC updates references in paragraphs (N)(1), (P)(6), (P)(7) and (P)(8) to align its rules with changes to the federal rules at 40 CFR 52.21(n)(1), (p)(6), (p)(7) and (p)(8), respectively.

iv. Other minor revisions

Additionally, SC DHEC makes a correction to one of the references in paragraph (AA)(12)(b), which incorrectly listed the requirements of the paragraph as being under “(AA)(12)(c) through (AA)(12)(b)(i).” The changes correct the reference to say “(AA)(12)(c) through (AA)(12)(i)” instead.

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<sup>8</sup> Although these provisions are contained in 40 CFR 52.21 (which contains federal PSD plan rules rather than minimum requirements for state PSD plans), South Carolina previously adopted these provisions into its PSD plan.

<sup>9</sup> Although this provision is contained in 40 CFR 52.21 (which contains federal PSD plan rules rather than minimum requirements for state PSD plans), South Carolina previously adopted this provision into its PSD plan.

As previously mentioned, all the changes detailed above are either minor edits and corrections or updates to align South Carolina’s rules with the minimum requirements for PSD plans (including updates responsive to EPA’s Project Emissions Rule, the NSR Corrections Rule, and the Tailoring Rule). For these reasons, EPA is proposing to approve and incorporate into the South Carolina SIP the changes to Standard No. 7.

*B. Regulation 61–62.5, Standard No. 7.1—Nonattainment New Source Review*

The February 3, 2022, SIP submittal includes the following key changes to South Carolina’s NNSR regulations contained within Regulation 61-62.5, Standard No. 7.1 (hereinafter referred to as “Standard No. 7.1”) to more closely align with the federal NNSR regulations: 1) added a definition for the “sum of the difference” based on EPA’s Project Emissions Accounting rule; 2) incorporated the federal interpollutant trading provisions for NNSR; and 3) made several changes throughout the rule based on EPA’s NSR Corrections Rule. More details on these changes to Standard No. 7.1 are included below.

All other changes to South Carolina’s Regulation 61-62.5, Standard No. 7.1, are minor edits, such as grammatical corrections, and renumbering sections based on added or deleted paragraphs throughout the rule.

*i. Revisions to reflect the Project Emissions Accounting Rule*

Under paragraph (A)(9), SC DHEC adds a new definition for the “sum of the difference,” which is used within other definitions in paragraphs (A)(6), (7) and (8). Subsequently, the definition for “*hybrid test for projects that involve multiple types of emissions units*,” under paragraph (A)(8) was updated to include a reference to the new

definition of the sum of the difference. These changes match those made to the federal NNSR regulations at 40 CFR 51.165(a)(2)(ii)(F) and (G), through EPA’s Project Emissions Accounting Rule.

ii. Revisions to reflect updates contained in the NSR Corrections Rule

Similar to the changes to South Carolina’s PSD regulations explained in Section II.A., SC DHEC makes several edits and deletions to Standard No. 7.1 to align this rule with updates to 40 CFR 51.165 resulting from the NSR Corrections Rule. These changes are detailed further below.

First, under paragraphs (A)(11)<sup>10</sup> and (B)(22), SC DHEC lowers the applicability threshold regarding consideration of fugitive emissions from for municipal incinerators from the capacity to charge more than two-hundred and fifty (250) tons of refuse per day to the capacity to charge more than fifty (50) tons of refuse per day. This change broadens the applicability of South Carolina’s Standard No. 7.1 for these types of sources and matches changes made to the federal NNSR rules at 40 CFR 51.165(a)(1)(iv)(C)(8) and (a)(4)(viii) through the NSR Corrections Rule.

Although most of paragraphs (A)(11) and (B)(22) are appropriate for incorporation into the South Carolina SIP and match the current federal rules, the State-effective version includes a portion of the definition for “Chemical process plants” under (A)(11)(t) and (B)(22)(c)(xx) that has never been approved into the SIP. In particular, the language contained after “Chemical process plant,” which states that “[t]he term chemical processing plants shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140,” is not currently in the

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<sup>10</sup> Paragraph (A)(10) is being renumbered to (A)(11).

SIP.<sup>11</sup> Due to the ongoing review of the 2007 Ethanol Rule in regards to the federal NNSR regulations, SC DHEC notes in its February 3, 2022, cover letter that it is not requesting EPA to approve these portions of paragraphs (A)(11) and (B)(22) into the SIP at this time.<sup>12</sup>

Second, in paragraph (B)(5), South Carolina adds a reference to 40 CFR Part 63 in accordance with updates contained in the NSR Corrections Rule. This paragraph already contains references to Parts 60 and 61 but based on changes to the federal NNSR rules at 40 CFR 51.165(a)(1)(xl), South Carolina adds the reference to Part 63 as well.

Third, in paragraphs (B)(21)(c)(v)(1) and (B)(21)(c)(vi), South Carolina removes the references to 40 CFR 51.166 in accordance with revisions arising from the NSR Corrections Rule. These references were incorrect to use in Standard No. 7.1 because 40 CFR 51.166 contains the Federal PSD regulations, rather than the federal NNSR regulations. Additionally, these references were unnecessary because these paragraphs

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<sup>11</sup> On May 1, 2007, EPA published in the *Federal Register* the 2007 Ethanol Rule (72 FR 24060), which amended EPA's PSD and NNSR regulations to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes from the "chemical process plants" category under the regulatory definition of "major stationary source." Shortly thereafter, EPA received a petition for reconsideration of the 2007 Ethanol Rule provisions from Natural Resources Defense Council (NRDC), which petition EPA initially denied on March 27, 2008. *See* 73 FR 24174 (March 27, 2008). In 2009, EPA received a second petition for reconsideration from NRDC, and NRDC also filed a petition for judicial review in the U.S. Court of Appeals for the District of Columbia Circuit challenging EPA's 2008 denial of its first petition for reconsideration. The court granted a joint motion to hold the case in abeyance, and the case has remained in abeyance. On October 21, 2019, EPA partially granted and partially denied the second petition for reconsideration. *See* 84 FR 59743 (November 6, 2019). Specifically, EPA granted the request for reconsideration with regard to the claim that the 2007 Ethanol Rule did not appropriately address the CAA section 193 anti-backsliding requirements for nonattainment areas. Concurrently, EPA denied the remainder of the requests for reconsideration. This means that states are now able to adopt the Ethanol Rule provisions for their PSD programs but are generally not choosing to do the same for their NNSR programs at this time.

<sup>12</sup> South Carolina's February 3, 2022, cover letter, additionally references a June 21, 2021, withdrawal letter, which was sent to EPA while the Agency was in the process of approving the State's last update to the NSR regulations into the SIP. In the February 3, 2020, letter, SC DHEC confirms that the intention of the June 21, 2021, withdrawal letter remains the same and that it is not requesting EPA to approve the Ethanol Rule provisions, found in Regulation 61-62.5, Standard No. 7.1, at this time.

already referenced 40 CFR Part 51, Subpart I, which house the federal NNSR regulations, found in 40 CFR 51.165.

Fourth, under paragraph (D)(6), which contains NNSR offset provisions, SC DHEC deletes an outdated reference to EPA's "Recommended Policy on the Control of Volatile Organic Compounds (42 FR 35314, July 8, 1977)." Instead, South Carolina points to 40 CFR 51.100(s), where a list of compounds with negligible photochemical reactivity can be found. According to the State's rule, emissions credit may be allowed only for hydrocarbons substituted with one of these compounds. This updated reference matches changes made to the federal NNSR rules at 51.165(a)(3)(ii)(D) through the NSR Corrections Rule.

Finally, under Section (H), specifically in paragraph (H)(1), South Carolina adopts corrections to the federal interprecursor offsetting rules, found at 40 CFR 51.165(a)(11), in order to delete vacated language regarding ozone interprecursor offsetting. Originally, the State-effective version of Section (H) contained language from the December 6, 2018, rule "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements" (2018 Implementation Rule). *See* 83 FR 62998. These federal provisions were later vacated by the D.C. Circuit through a January 29, 2021, court decision. *See Sierra Club v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). Accordingly, on June 22, 2021, EPA removed this vacated language from 40 CFR 51.165(a)(11) through the NSR Corrections Rule.

South Carolina's previous proposed SIP revision addressing Standard No. 7.1, which was submitted to EPA on April 24, 2020, sought to incorporate Section (H), including the vacated language mentioned above, under paragraph (H)(1), into the SIP.

Because of the court decision and vacatur, South Carolina later withdrew its request for EPA to incorporate Section (H) in its entirety into the SIP, through an April 20, 2021, withdrawal letter, and so this section is not currently found in the SIP-approved version of Standard No. 7.1. The February 3, 2022, SIP revision now submits a corrected version of Section (H), with the removal of the vacated language from paragraph (H)(1), for incorporation into the SIP. EPA has evaluated the revised provision and found that the language matches that of the federal NNSR regulation, found at 40 CFR 51.165(a)(11), and is proposing to incorporate it into the South Carolina SIP.

As previously mentioned, all the changes detailed above are either minor edits and corrections or are updates to align South Carolina's rules with minimum requirements in the federal NNSR rule found at 40 CFR 51.165, based on changes made through EPA's Project Emissions Rule and the NSR Corrections Rule. For these reasons, EPA is proposing to approve and incorporate into the South Carolina SIP the changes to Regulation 61-62.5, Standard No. 7.1, except for the parts of subparagraphs (A)(11)(t) and (B)(22)(c)(xx) noted above, as they relate to the Ethanol Rule Provisions of the federal NNSR regulations,

### **III. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Sections I and II of this preamble, EPA is proposing to incorporate by reference South Carolina's Regulation 61-62.5, Standard No. 7 – *Prevention of Significant Deterioration*, and Standard No. 7.1 – *Nonattainment New Source Review*, both state effective on November 26, 2021, except for a portion of paragraphs (A)(11)(t)

and (B)(22)(c)(xx) related to the Ethanol Rule Provisions, found in Regulation 61-62.5, Standard No. 7.1. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

#### **IV. Proposed Action**

As described above, EPA is proposing to approve, with the exceptions noted above, the changes to the South Carolina Regulation 61-62.5, Standards No. 7 – *Prevention of Significant Deterioration*, and Standard No. 7.1 – *Nonattainment New Source Review*, both state effective on November 26, 2021. These changes were submitted by South Carolina on February 3, 2022.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);



- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this proposed action for the State of South Carolina does not have Tribal

implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this proposed action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120 (Settlement Act), “all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and are fully enforceable by all relevant state and local agencies and authorities.” The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**(Authority:** 42 U.S.C. 7401 *et seq.*)

Dated: July 19, 2022.

**Daniel Blackman,**

*Regional Administrator,*

*Region 4.*

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